

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First  
Schedule of the Act

BETWEEN TRANSPOWER NEW ZEALAND  
LIMITED

(ENV-2018-CHC-26)

(and all other appellants listed in  
the attached Schedule)

Appellants

AND SOUTHLAND REGIONAL  
COUNCIL

Respondent

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**MINUTE OF THE ENVIRONMENT COURT**

**Tranche 2 and 3  
(23 December 2021)**

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**Introduction**

[1] This Minute is issued for the purposes of case management and more particularly pre-hearing timetabling directions for Tranches 2 and 3. Judge Borthwick is on long service/annual leave, returning at the end of January 2022. I have consulted her on the matters in the directions that follow and have been authorised by her to make those directions. As some parties will be aware from earlier court Minutes, I am rostered to sit on the Tranche 1 hearing commencing



14 March 2022.

## Background

[2] In accordance with court directions,<sup>1</sup> on 2 December 2021 Southland Regional Council (‘the Council’) filed a proposed timetable for the determination of its challenge to a scope issue arising from Wilkins Farming Company Limited (‘Wilkins’) appeal and Tranche 2 and 3 pre-hearing steps.<sup>2</sup> The Council filed a further memorandum dated 21 December 2021 as a result of my inquiring whether the proposed timetabling implemented the court’s directions<sup>3</sup> and might be expedited. Amongst other things, the latter memorandum proposes:

- (a) in Appendix D a 4-week timetable for the exchange of submissions on the Wilkins’ jurisdiction challenge commencing 11 February 2022 and concluding 11 March 2022;<sup>4</sup>
- (b) in Appendix D a 10-step, 14-week process for the Tranches 2 and 3 hearing commencing after the court determines the Wilkins’ jurisdiction challenge. On this basis, it is said that the hearing of Tranches 2 and 3 could commence in late July or early August 2022;<sup>5</sup>
- (c) that the court’s direction “any hearing is to commence on or after 1 June 2022”<sup>6</sup> should be interpreted as meaning that the hearing must not begin before 1 June 2022, rather than that it must begin on or as soon as possible after 1 June 2022, which was at the root of my inquiry at [2] above. Should it be required, leave is sought to allow for a timetable which provides a hearing start date other than early June

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<sup>1</sup> Record of Pre-Hearing Conference Timetabling Directions (Topic B), 22 October 2021 at [24].

<sup>2</sup> Memorandum of counsel for Southland Regional Council, 2 December 2021 at Appendix A.

<sup>3</sup> In particular, whether the proposed timetable would enable Tranches 2 and 3 to be heard “on or after 1 June 2022” at [10].

<sup>4</sup> The proposed start date recognises, at least in part, the need for those involved to have a reasonable Christmas – New Year break from professional duties after a demanding 2021. The court has previously signalled it is sympathetic to this view.

<sup>5</sup> Memorandum of counsel for Southland Regional Council, 21 December 2021 at [7] and [8].

<sup>6</sup> Record of Pre-Hearing Conference Timetabling Directions (Topic B), 22 October 2021 at [15].

2022;

- (d) the parties to Tranche 3 are now agreed that there are no preliminary jurisdictional matters that need to be dealt with ahead of evidence exchange (or expert conferencing) and that Tranche 3 could be brought to hearing on 7 June 2022 in accordance with Appendix C to the 21 December 2021 memorandum. This sequence matter is returned to below;
- (e) three alternative options for timetabling Tranche 2 are proffered by the Council, namely:
  - (i) Option 1 – would require the appellants’ submissions on the Wilkins’ jurisdiction issue to be filed by 14 January 2022 and the court’s decision to issue by 18 February 2022 (within a week of reply submissions) in order for a hearing to potentially commence on 7 June 2022. This would see parties participating in the Tranche 1 hearing while preparing for the Tranche 2 hearing. Parties, reportedly, consider this should be avoided if at all possible on account of the likely overlapping workload, the risk that neither hearing would receive due attention, and the requirement for court documents to be prepared in January 2022 when those involved would otherwise be on leave. This option is not favoured by the court for the reasons identified by the Council and not discussed further;
  - (ii) Option 2 – the Tranche 2 timetable would remain unchanged from that proposed in the Council’s 2 December 2021 memorandum and now attached as Appendix D to the Council’s 21 December 2021 memorandum. If the court were not minded to approve the Council’s 2 December 2021 timetable, it requests that Appendix D be adopted for Tranche 2. An exhaustive comparison of the proposed 2 December 2021 timetable and Appendix D to the 21 December 2021 memorandum has not been undertaken. They appear to be similar and I have focused primarily on Appendix D. The

parties should not assume in this case that court resources would be available to facilitate expert conferencing. The proceedings have been at foot for some time. The parties might reasonably have been expected to have worked together to identify common understandings and differences, or can do so in the future. It may be relevant that the 2 December 2021 memorandum refers to conferencing in qualified terms; namely “if required”.<sup>7</sup> If there is to be expert witness conferencing as proposed in rows 11–13 of Appendix D, it should occur concurrently with other pre-hearing steps without extending the timetable;

- (iii) Option 3 – Wilkins has reportedly suggested to the Council that Tranche 2 could be placed on hold because the Tranche 2 matters are potentially amenable to resolution by agreement. While supported by Wilkins and one other party, this approach is opposed by the Council and one other party. This option is not adopted by the court. It is considered that the parties have had adequate time to explore settlement options. The proceedings are to be timetabled in the interests of their timely finalisation and certainty. It is unclear to the court, at this stage, that Tranches 2 and 3 concern sufficiently unrelated matters for them to be heard out of sequence.<sup>8</sup> The option is not discussed further.

[3] It will be evident from the preceding text, and subject to the directions below, that the court prefers Option 2 as a general basis for timetabling Tranche 2, including the Wilkins’ jurisdiction matter and Tranche 3.

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<sup>7</sup> Memorandum of counsel for Southland Regional Council, 2 December 2021 at [12] and [13].

<sup>8</sup> Minute dated 4 October 2021 at [10] and Record of Pre-Hearing Conference Timetabling Directions (Topic B), dated 22 October 2021 at [2].

## Directions

[4] Subject to specific directions that follow, the parties are granted leave to prepare for the hearing of Tranches 2 and 3 generally, in accordance with the timetabling in the Council's 21 December 2021 memorandum at Appendix D. At this juncture, a hearing date for Tranche 2 commencing late July 2022 or early August 2022 is acceptable to the court, although it is recognised that this may require extension when worked up in detail. The hearing of Tranche 3 is to follow Tranche 2 unless the Council satisfies the court on a robust basis that the subject matter is sufficiently unrelated to justify the reverse order, and there is good reason for them to be dealt with out of sequence.

[5] If the parties seek expert witness conferencing it is to be conducted concurrently with other steps in the Appendix D timetable and not assume the availability of court resources to facilitate.

[6] The Council is to consult with the parties on amendments to Appendix D considered necessary as a result of these directions, and file further proposed timetabling for Tranches 2 and 3 no later than **4 February 2022**. The timetabling is to propose specific dates including an indicative date for the court's determination of the Wilkins' jurisdiction matter.

[7] The timetabling at [4] and [6] above is to allow for the four Wilkins' jurisdiction steps in Appendix D to commence no later than **11 February 2022** and finishing **11 March 2022**.

[8] It should not be assumed that the Wilkins' jurisdiction matter is best determined on the papers. The court understands the matters to be challenging and the revised Appendix D is to allow for hearing time, as it is likely to be required. The parties' submissions and materials provided to the court are to:

- (a) set out in clear, agreed terms the jurisdiction matter to be determined;
- (b) include all materials relevant to determination of the matter. For

example, Wilkins' submission on the Proposed Southland Water and Land Plan, the Council's first instance decision, Wilkins' appeal notice, and jurisdiction relief sought;

- (c) an affidavit provided by a planner for either the Council or Wilkins that sets out relevant aspects of the statutory planning framework.
- (d) the parties should anticipate that at an appropriate juncture, further directions will be made, timetabling the exchange of broader planning evidence on the jurisdiction matter.

[9] When filing the revised Appendix D timetabling, and after consulting the parties, the Council is to advise the court whether it is considered necessary that a Tranche 1 decision be issued before Tranches 2 and 3 are heard.

[10] Leave is granted for the parties to apply for different or further directions.



**R M Dunlop**  
**Deputy Environment Commissioner**

Issued: 23 December 2021



## Schedule – List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-27	Fonterra Co-operative Group Limited
ENV-2018-CHC-29	Aratiatia Livestock Limited
ENV-2018-CHC-30	Wilkins Farming Co Limited
ENV-2018-CHC-31	Gore District Council & others
ENV-2018-CHC-32	DairyNZ Limited
ENV-2018-CHC-33	H W Richardson Group Limited
ENV-2018-CHC-34	Beef + Lamb New Zealand
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-44	Wilkins Farming Co Limited (previously Campbell's Block Limited)
ENV-2018-CHC-45	Wilkins Farming Co Limited (previously Robert Grant)
ENV-2018-CHC-46	Southwood Export Limited & Others
ENV-2018-CHC-47	Te Rūnanga o Ngāi Tahu, Hokonui Runāka, Waihopai Runāka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated